The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE TIMES COMPANY, Plaintiff, v. LEATHERCARE, INC.; STEVEN RITT, an individual, and the marital community composed of STEVEN RITT and LAURIE ROSEN-RITT, Defendants and Third Party Plaintiffs v. TOUCHSTONE SLU LLC, a Washington limited liability company; TB TS/RELP LLC, a Washington limited liability company; American Linen Supply Co., a Washington corporation; Does 1-20, Third Party Defendants.	No. 2:15-cv-01901-TSZ **DEFENDANTS AND THIRD PARTY PLAINTIFFS' RESPONSE IN OPPOSITION TO SEATTLE TIMES COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ESTABLISHING THE LIABILITY OF STEVEN RITT** **NOTE ON MOTION CALENDAR: July 14, 2017**

I. RELIEF REQUESTED

Come now the Defendants and Third Party Plaintiffs, and hereby request this Court to deny the Plaintiff's Motion for Partial Summary Judgment, which seeks a ruling finding Mr. Steven Ritt personally liable in this matter, on the following grounds, at a minimum:

1. LeatherCare, Inc. is an active corporation in good standing with the State of Washington ("LeatherCare").

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2. LeatherCare is the person that operated the drycleaning business at the Troy property.

3. LeatherCare is still in business and is a going concern with assets including insurance policies, financial accounts and physical plant equipment.

4. Mr. Ritt has not taken any actions or made any decisions relevant to this lawsuit that were made outside of the scope of his employment with LeatherCare.

5. No actions or omissions at issue in this case were ever taken by Mr. Ritt that were not taken by or on behalf of the company, LeatherCare.

6. Mr. Ritt managed the day-to-day business operations of LeatherCare, but did not have individual control over, or make personal decisions about the mechanisms of release of PCE from LeatherCare's operations at the site.

7. Mr. Ritt did not personally control or make individual decisions about the means and methods of the installation of the equipment purchased by LeatherCare and installed at the Troy property. An independent contractor with expertise in drycleaning equipment installation did.

8. Mr. Ritt did not personally control or make individual decisions about the manner in which Troy Laundry provided the waste disposal service at the site. Troy Linen and Uniform Services, Inc. ("Troy" or "Troy Laundry") as LeatherCare's landlord did.

9. Mr. Ritt did not personally control or make individual decisions about the design or construction of the Troy Laundry drains, sewer pipes or catch basins. Troy Laundry did.

10. Plaintiff's motion fails for lack of a *prima facie* showing that Mr. Ritt had any control or personal decision making authority over the facilities from which the hazardous substances were released, namely the Troy dump truck and the Troy sewer lines.

11. In the alternative and at a minimum, material questions of fact exist as to whether Mr. Ritt exercised the requisite amount of personal control and personal decision

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making in connection with the mechanisms that gave rise to the releases of the hazardous substances at the property.

12. No cause of action for "arranger" liability has been pled against any party, including Mr. Ritt in this case. Seattle Times was obligated to move this Court for leave to amend its Amended Complaint to add a new cause of action for arranger liability, before it could bring this motion. It has not done so[1].

13. Even if a cause of action had been pled as to arranger liability, Troy Laundry was the arranger of the hazardous substances at issue in this case, if anyone.

14. Mr. Ritt did not personally control the disposal of hazardous substances separate or apart from LeatherCare's operations at Troy; therefore, "arranger" liability does not apply.

III. STATEMENT OF ISSUES

1. Should this Court deny the Plaintiff's motion for an Order finding Mr. Steven Ritt personally liable as an individual where the "person" that formerly "operated" at the Troy property was his company, his employer, LeatherCare Inc. and where the evidence and facts required to find an individual liable as an additional "operator", in addition to the company with which the individual is affiliated, are not presented here.

2. In the alternative, should this Court deny the Plaintiff's motion because genuine issues of material facts exist where the moving party has presented facts going to Mr. Ritt's individual day-to-day management activities, but not to any personal decisions that he made or personal control over the actual mechanisms of releases identified by the Seattle Times' expert that caused the contamination at the site.

[1]The moving party has further already admitted its own liability and is, therefore, ineligible to pursue a CERCLA cause of action under section 107, which is the only section of CERCLA under which it pleaded any cause of action against the Defendants, including Mr. Ritt. Dkt. 18. Defendants expressly reserve all rights to separately address this issue and move to dismiss Seattle Times' CERCLA claims as they have not asserted claims under the contribution section of CERCLA.

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3. Should this Court decline to hear the portion of Plaintiff's motion requesting a ruling on personal "arranger" liability where Plaintiff has not pled a cause of action for arranger liability and has not presented any such claim in the case to date.

4. In the alternative, should this Court deny the Plaintiff's motion requesting an Order finding Mr. Steven Ritt personally liable as an arranger where he did not personally exercise control over disposal of a hazardous substance arising from something other than the operation of a the LeatherCare facility.

IV. EVIDENCE RELIED UPON

Defendants rely upon the Declaration of Steven Ritt and the exhibits attached thereto and the Declaration of Jo M. Flannery and the exhibits attached thereto in support of this Opposition and the other pleadings and papers in the Court Clerk's files.

V. STATEMENT OF FACTS

a. Additional Facts.

1. The Seattle Times did not include a cause of action for "arranger" liability its Amended Complaint. Dkt. 18.

2. The Seattle Times has not pursued a claim for "arranger" liability in this case. Only "owner" and "operator" liability has been asserted. (Declaration of Jo M. Flannery "Flannery Dec." at Ex. A).

3. Seattle Times' expert, Peter Jewett, gave expert testimony that the long delay in taking any action at the site allowed the contamination to spread and substantially increased the cost of the clean-up. (Flannery Dec. at Ex. B). This delay and substantial increase to the overall cost of the clean-up occurred on the Seattle Times' watch, over the 26 years that the Seattle Times owned and operated the site. Dkt. 56-3 at 6.

Q. So given that, that's the actual data from the
site, how could it have cost substantially more to
address if the cleanup action was delayed?

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> A. As the contamination migrates into groundwater,
> the groundwater migrates from the site, the plume gets
> bigger, and the -- there is a larger volume of
> contaminated groundwater. So that -- and the
> groundwater cleanup is a volume calculation. The more
> volume contaminated groundwater, the more it costs.
> So as that source continued to add PCE to
> groundwater, that groundwater plume would have
> increased, therefore the cost would have gone up.

(Flannery Dec. at Ex. B).

4. Troy laundry arranged for the collection and disposal of all waste at the site. (Flannery Dec. at Exs. C and D). Troy provided a dump truck as the waste receptacle. Troy decided where to part the truck. Troy performed the maintenance on the truck. Troy decided when and if to cover the truck. *Id.*

5. Troy laundry controlled, maintained and serviced its own catch basins, drains, detention vaults and sewer lines. *Id.*

6. Steve Ritt is an employee of LeatherCare, Inc. and the current President of LeatherCare Inc. ("LeatherCare"). (Declaration of Steven Ritt "Ritt Dec." at ¶ 2).

7. Mr. Ritt did not take any actions or make any decisions relevant to this lawsuit that were made outside of the scope of his responsibilities to or employment by LeatherCare. *Id.* at ¶ 3.

8. LeatherCare is an active business. LeatherCare is a solvent, going concern with assets including insurance policies, financial accounts and equipment in its physical plant. *Id.* at ¶ 4.

9. Mr. Ritt's father named him as the "President" of the company in 1960, but it was a title only a sign of hope that Steve would go into the family business. Steve was still in

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high school at the time. *Id.* at ¶ 6.

10. Mr. Ritt attended college and then went to work for the Shell Oil Company in labor relations. He did not join the family business as an active participant until 1974. *Id.* at ¶¶ 7-11.

11. Mr. Ritt's role in the business expanded from 1974 going forward. His father, Al Ritt, remained involved in the business, even if he had stepped back from the day-to-day operations, until he retired in 1985. *Id.* at ¶ 13.

12. It was Steve's father that negotiated the business relationships between LeatherCare and Troy, including the lease terms and services that Troy provided. The relationship between LeatherCare and Troy was already well established by the time that Steve started in the day-to-day management of LeatherCare's business. *Id.* at ¶ 14.

13. LeatherCare's relationship with Troy was pretty simple. Seattle Time's attorneys did not seem to grasp the basic terms on the landlord tenant relationship when making inquiry at depositions. LeatherCare paid Troy a percentage of gross receipts and in exchange Troy provided all of the services and building infrastructure that LeatherCare needed, including water, sewer, power, garbage or waste services, steam from the boiler, lights, all as a package in LeatherCare's lease deal. Troy was already using and providing all of these services at the plant for itself. It was simple for Troy to just offer it as a package to LeatherCare in exchange for a percentage of gross receipts. Troy did not need to make any special or new arrangements to provide all of those services to LeatherCare. That was the relationship. *Id.* at ¶ 15 and Ex. B.

14. When LeatherCare incorporated in 1960 it was a small business with about 4 employees. It grew over time. It initially ran a small dry cleaning operation within the Troy facility, where Troy also ran its industrial drycleaning operation. LeatherCare had a lease with Troy Laundry which allowed LeatherCare to use a small area of one of Troy's buildings. The original agreements between Troy and LeatherCare were a hand shake deal, again negotiated

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by Steve's father. The lease allowed LeatherCare the non-exclusive use of Troy's Stoddard Solvent drycleaning washers and dryers. LeatherCare's operation was very small compared to Troy's. Troy, as landlord, provided all of the solvent and the utilities, including power, water, steam and garbage or waste service, in exchange for a percentage of LeatherCare's gross receipts. This landlord tenant relationship continued from approximately 1965 through 1979. *Id.* at ¶ 18.

15. In 1979, LeatherCare purchased new drycleaning equipment and expanded its exclusive use area adjacent to Troy's Stoddard solvent drycleaning operation, still in the same building. The size of the area that LeatherCare leased increased and LeatherCare was no longer using Troy's Stoddard solvent, but all of the other lease provisions remained the same. From 1979 to 1985, Troy continued to provide all of the utilities and physical plant services that LeatherCare needed, including power, water, sewer, steam, garbage or waste services and so on, in exchange for a percentage of LeatherCare's gross receipts. *Id.* at ¶ 19.

16. From 1979 LeatherCare was now disposing of its own waste from its business operations, but in the same manner as had been established and provided for by Troy, in its role as LeatherCare's landlord, and in the same manner as it, Troy, was already providing for its own waste disposal in connection with its own drycleaning and industrial laundry operations at the site. *Id.* at ¶ 20.

17. During the last few years of LeatherCare's tenancy, before it moved in 1985, Troy added a new waste disposal service through a specialty company, Safety Kleen. Troy provided the Safety Kleen hazardous waste removal service to LeatherCare as a part of LeatherCare's lease in the same way that it had provided all of the other utilities and physical plant services in the past. *Id.* at ¶¶ 21, 22 and Ex. C.

18. Mr. Ritt did not personally make the decisions as to how the garbage or waste at Troy, including from LeatherCare's operations were collected or disposed. *Id.* at ¶¶ 22, 28.

19. In 1985 LeatherCare moved out of Troy. Troy was shutting down. Troy sold

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the property to the Seattle Times and LeatherCare moved to its current location, on Elliott Avenue, where it has been ever since. *Id.* at ¶ 16.

20. It was not until 1985, after LeatherCare moved out of the Troy plant and into its own facility that Mr. Ritt started to make the decisions and arrangements about waste handling and disposal for LeatherCare. But, those decisions were made in connection with the new facility on Elliott Ave, where LeatherCare now had a need to start providing all of its own utilities and physical plant services; services previously provided to LeatherCare by Troy. *Id.* at ¶ 23.

21. Mr. Ritt did not control the means and methods for installation of LeatherCare's drycleaning equipment at Troy. LeatherCare hired a contractor with expertise in the installation of dry cleaning equipment, Joe Schofield, to install its new drycleaing equipment, at Troy, in 1979. Joe Schofield also had his own drycleaning business and had experience with new equipment installation. Mr. Ritt did contribute physical labor toward the installation of some of the piping, but he did not personally made the decisions about how and where to install the equipment. That was not his area of expertise. That is why LeatherCare hired a specialty contractor. Joe Schofield ran the job for LeatherCare. *Id.* at ¶ 24.

22. LeatherCare purchased a Hoyt Snif-O-Miser to pull solvent vapors out of the air and recover solvent for reuse. The Snif-O-Miser was installed by the contractor, piped to the sewer, which Mr. Ritt understands is per the manufacturer's instructions. Other work, for example, laying out and fitting steam pipe was up to the contractor's discretion. *Id.* at ¶ 25.

23. Neither LeatherCare, nor Mr. Ritt personally had anything to do with the design of the Troy Laundry sewer system, sewer pipes, catch basins or drains. Neither LeatherCare, nor Mr. Ritt had anything to do with the City of Seattle's design or work on the sewer system in the City main in Boren Avenue. Mr. Ritt did not personally make any decisions regarding the choice of materials that went into the drains or joints in the Troy Laundry sewer pipes. He was still in college when all of those decisions were made. *Id.* at ¶

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26.

24. In the earlier years of LeatherCare's tenancy at the Troy property, when LeatherCare's waste was disposed of in the Troy dump truck, it was Troy that provided the dump truck as the dumpster to use for the waste services part of its obligations under the lease with LeatherCare. Troy selected the location for the dump truck, parking it in the loading dock area. Troy used the dumpster as well. Troy controlled the dumpster. Troy maintained the dumpster. Troy decided when to cover or not cover the dumpster. Troy decided when to take the dumpster to the transfer station and unload it. Mr. Ritt did not personally have control over or make any of those decisions at any time in the course of his employment with LeatherCare. *Id.* at ¶ 28.

VI. AUTHORITY

a. **Standard of review for summary judgment as set forth by Plaintiff; non-waiver of rights regarding immaterial "Facts" alleged.**

Plaintiff concedes that summary judgment may not be granted where there is a genuine issue of material fact in dispute. Dkt. 53 at 8. However, a review of Plaintiff's opening brief and supporting papers reveals that Plaintiff has failed to present facts that go to the issues upon which it carries the initial burden of proof. As outlined below, Plaintiff presents numerous alleged facts, but the record is devoid of facts supporting the material issues or the Plaintiff's essential elements of proof. Therefore, Plaintiff's motion must be denied. *Id.* citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986).

Plaintiff alleges that the "facts" it presents are "unrebutted [and "irrefutable"] factual and expert testimony" (Dkt. 53 at 5, 7, 10). Plaintiff presents numerous statements of alleged fact both in the body of its brief and in the declarations presented therewith. Defendants do not seek to here rebut the non-material misstatements of fact, mistaken and misleading expert

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opinions and testimony[2]. They are too numerous to address here and not necessary to the opposition of this motion. Defendants do, however, reserve all rights to address these issues as and when appropriate and by remaining silent as to each and every one of these misstatements and misrepresentations here Defendants do not acquiesce, agree or admit to any of these. For the sake of judicial economy we reserves all rights to address the matters when and where they are material.

Plaintiff argues that summary judgment would be a useful tool here to hasten the "remedial action or settlement discussions." Dkt. 53 at 8. A complete site re-development has already taken place. A new building sits over a five-story parking garage at the Troy block. Defendants, for their part, have been standing ready to engage in meaningful settlement discussions since October 2015. A ruling on personal liability is not likely to facilitate alternative dispute resolution.

We do agree, however, that summary judgment can be an effective tool for eliminating tenuous claims (*Id.*) and ask that the Court enter judgment in favor of the Ritts and dismiss the individual claims in this case.

b. Plaintiff does not request this ruling in the service of CERCLA's purposes.

CERCLA has two primary goals. To ensure the prompt and effective clean-up of contaminated properties and to assure that the responsible parties bear the costs of the remedy *Id.* LeatherCare for its part has stood ready throughout these proceedings to bear its fair share of actual clean-up costs, not 100 percent of the clean-up costs and not costs that were voluntarily undertaken by the Seattle Times in the negotiation of the purchase and sale of the Troy Block property, without notice to LeatherCare and without any opportunity to gather

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[2] Plaintiff filed this motion while discovery to it regarding essential elements of their individual claims are pending to them and in advance of the depositions of their experts, which are not yet complete and in advance of the date (8-17-2017) for filing challenges to expert reports and opinions.

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evidence or provide input.

Moreover, Seattle Times did not seek to promptly clean-up the Troy Block. It sat on the property with notice of contamination for 26 years, while the contamination likely spread and became worse, according to its own expert, and while witnesses with knowledge passed away and important documents were lost to time and Troy Linen was dissolved making it very difficult for LeatherCare and the Ritts to effectively gather the evidence supporting fair shares for allocation in this matter. Seeking to make Steven Ritt personally liable here, separate and apart from his company, does not serve the stated purposes of CERCLA. It is a coercive tactic employed in an effort to extract more than what is fair and right in this matter. As outlined below, the motion lacks merit both on the facts and on the law.

c. Plaintiff fails to meet its initial burden of production. Judgment should be entered in favor of the Ritts and the individual claims against the Ritts should be dismissed.

When a moving party fails to meet its initial burden of production by failing to present *prima facie* evidence as to each required element of its claim, then summary judgment may be entered for the non-moving party. "If a moving party fails to carry its initial burden of production, the nonmoving party has no obligation to produce anything . . . In such a case, the nonmoving party may defeat the motion for summary judgment without producing anything." *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos.*, 210 F.3d 1099, 1102-03 (9th Cir. 2000) (internal citations omitted).

Seattle Times asserts two pathways or mechanisms for releases of PCE to the soil and groundwater at the site. It takes some discipline to suss this out, but the Court will find at paragraph five of Mr. Krasnoff's Declaration the dispositive issue here. The two pathways identified are 1) the Troy dumpster, which Troy would leave exposed to rain water, leaking storm or other effluent out of the dumpster onto the ground; and 2) the Troy sewer system, in the 1964 building addition, including drains, sewer lines, detention vaults, and so forth. Dkt. 53-3 at 2, ¶ 5. Mr. Ritt did not have authority or control over the facility from which the

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releases are claimed to have arisen.

A "facility" here means "any pipe . . . or storage container . . . where a hazardous substance has been deposited…" 42 U.S.C. § 9601(9)[3]. According to the Seattle Times' expert, Mr. Krasnoff, the facility from which the releases occurred was the Troy sewer pipes, in the first instance and the Troy dumpster, in the second instance. Dkt. 53-3 at 2, ¶ 5. According to the case law relied upon by the moving party, the Times must demonstrate that Mr. Ritt had authority to personally control the facility, that he "direct[ed] the workings of, manage[d], or conducted the affairs of [the] facility." *U.S. v. Meyer*, 120 F.Supp. 2d 635 (1999). Dkt. 53 at 15.

Seattle Times offers hundreds of pages filed with its motion, but no evidence that Steven Ritt personally directed the workings of the Troy dumpster or the Troy sewer system, that Steven Ritt personally managed the Troy dumpster or the Troy sewer system, or that Steven Ritt conducted the affairs of Troy, the actual owner and operator of the facilities in question. Having failed to meet its initial burden of production Plaintiff's claims against Mr. Ritt, his wife Laurie Rosen-Ritt and the marital community composed thereof should be dismissed.

d. Caselaw cited by Plaintiff highlights the absence of individual "operator" liability here.

Seattle Times does not present any authority from the Ninth Circuit to support a ruling that Mr. Ritt should be held personally liable, as an additional "operator" in this case. In this case, Mr. Ritt's company, LeatherCare is not insolvent, but an active, going concern. Mr. Ritt did not take any actions or make any decisions that were not made by or on behalf of the

[3] (9) The term "facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

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corporation. And, what is fatal to the Times' motion, as outlined above, Mr. Ritt did not have authority or control over the mechanisms of releases of PCE to soil or groundwater, namely the Troy dumpster or the Troy sewer system. Therefore, Plaintiff's claim fails as a threshold matter.

1. No Controlling or Applicable Ninth Circuit Case Law is Cited.

The only Ninth Circuit case concerning an individual person that the Seattle Times presents held that the individual defendant was not liable and it was an "owner". It is not even an "operator" case. *City of Los Angeles v. San Pedro Boat Works,* 635 F. 3d 440 (2011). Dkt. 53 at 10.

The other Ninth Circuit cases Plaintiff cites to do not even involve individuals. For example, *Kaiser Aluminium & Chemical Corp. v. Catellus Development Corp*., 976 F.2d 1338 (1992) involved an excavating company, James L. Ferry & Son. The excavation company was held liable as an "operator". No extra or additional individual "operator" liability was at issue. Dkt. 53 at 10. *Redevelopment Agency of City of Stockton v. BNSF Ry. Co.* 643 F.3d 668 (2011) is not even an "operator" case and not even a CERCLA or MTCA case. It treated a California state statute, in connection with an easement and found, in all events, that the railroad, a corporate defendant, was not an "owner" under that statute.

2. No Controlling or Apposite Case law is Cited from Other Circuits.

Seattle Times' additional case law is equally inapposite. It includes an un-reported case from the Eastern District of New York holding an individual defendant liable for contamination to groundwater where one of the individuals owned the property as an individual, not through a company and the other individual was the polluter's principal shareholder and president, but the actual polluter corporation, MDI, was insolvent and had failed to complete required closure activities because of its insolvency. *International Clinical Laboratories, Inc. v. Stevens*, 1990 WL 43971. Dkt. 53 at 15. Mr. Ritt is not the owner in title to the contaminated property at issue here and LeatherCare is not insolvent.

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Seattle Times also relies upon a District Court case from the Western District of Michigan, *U.S. v. Meyer*, 120 F.Supp. 2d 635 (1999). Dkt. 53 at 15. In *Meyer*, contamination leaked from sewer pipes into groundwater. No corporate entity was available or involved in that case. The individual defendant also owned the property as an individual. The individual defendant also personally designed the sewer system that leaked. In *Meyer,* the individual defendant who owned the property and who designed the sewer system also had personal knowledge that his property was being developed for use as an "industrial park whose residents would probably generate industrial waste water, but he did not build the perimeter sewer line to accommodate such wastes." (*Id.* at 641). Mr. Ritt did not personally design the Troy Laundry sewer system let alone have actual or personal knowledge that trace amounts of substances in distilled separator water could have an adverse effect on the sewer system materials selected by the owner, Troy laundry[4]. *Meyer* is wholly inapposite.

Seattle Times further relies upon two cases from the Seventh Circuit that both deal with owners and operators of landfills. *Allied Waste Transportation, Inc. v. John Sexton Sand & Gravel Corp.* WL 3443897 (2016) and *Browning-Ferris Industries of Illinois, Inc. et al. v Ter Maat,* an un-reported case at 2000 WL 1716330. Only one of those two cases actually found an individual to be separately liable from the person's affiliated company.

Allied Waste litigated a complex partnership dispute where more than 96 million dollars in clean-up costs were at issue. The individual defendants' affiliated corporate entity, Sexton, had "experienced a variety of financial hardships". 2000 WL 3443897 (2016) at 5. The Court adhered to the following standard. An "operator is someone 'directly and personally engaged in conduct that led to the specific environmental damage at issue in the

[4] We note that Troy would have been in the best position to know and in the closest relational position to Meyer as Troy knew that it was designing and constructing its building to house its own drycleaning operations and it, Troy, knew what its own waste stream would be, including separator water from its own PCE drycleaning operation, which pre-dated LeatherCare's in the very same location in the 1964 addition building.

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case.'" *Id.* (internal citation omitted). "Active participation in, or exercise of specific control of, the activities in question must be shown." *Id.* at 14. Serving "generally in a supervisory capacity" or having "general corporate authority" is not enough. *Id.*

The next Seventh Circuit landfill case that Plaintiff cites did find individual "operator" liability in connection with a heavily polluted Superfund site. One of the individual's corporations was run with very little capital for tax reasons. It had abandoned the landfill and the site was placed upon the EPA's Superfund National Priority List. Prior to the litigation, the individual, Maat, sold his other corporation and moved to Florida. *Browning-Ferris Industries of Illinois, Inc. et al. v. Ter Maat,* 195 F.3d 953, 955 (1999). Individual liability would only attach if he was found to have "operated the landfill personally, rather than merely directing the business of the corporations of which he was the president. . ." *Id.* at 956. Maat was found to have personally operated the landfill, by among other things, personally negotiating almost every contract with the waste haulers and setting the rates. He was a key figure in the entire set-up. "He personally involved himself with accepting and rejecting loads from waste haulers" 2000 WL 1716330 at 2. "He personally handled the special waste disposal process", "personally saw or inspected (or at least tried to) every waste stream that was permitted as special waste and took waste samples from each special waste generator, arranged for testing with the laboratories to analyze each waste sample" and on and on. *Id.* The evidence that Plaintiff offers here is nothing like the personal involvement of Maat at his landfill Superfund site. The evidence offered by Plaintiff as against Mr. Ritt is evidence of his involvement as a business manager and the holder of the title of President of LeatherCare, but there is no evidence that Steve was personally involved beyond directing the business of the corporation of which he was and is the president. Moreover, LeatherCare's business was leather, fur and fabric cleaning, repair and restoration, not running a landfill. Thus, even under *Maat*, the legal and factual requirements for a finding of individual operator liability are not here found. Plaintiff's motion should be denied and judgment entered

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dismissing the Ritts.

e. Seattle Times has not pled a cause of action for "arranger" liability as to any party. Therefore, its motion should be denied.

Defendants object to the portion of the Plaintiff's briefing that addresses "arranger" liability. The Court should decline to consider the "arranger" portion of the Seattle Times motion as it has not alleged a cause of action for "arranger" liability as against any party, and not against Mr. Ritt or his marital community. Dkt. 18. Seattle Times further has not been pursuing an action for arranger liability in this case as to any party. Seattle Times retained and disclosed an "allocation expert", Mr. Richard White[5]. And nowhere in his expert reports does he present even a proposed allocation to any party on the basis of an "arranger" status. (Flannery Dec. at Ex. A).

Seattle Times was obligated to move to amend its Amended Complaint seeking to add a new cause of action for "arranger" liability before it could bring this motion, which it did not. The Defendants, for their part, would then be allowed to plead as against the Seattle Times and any of its individual officers and directors for "operator" liability in connection with their operation of a leaking hazardous waste storage facility for 26 years. However, the current status of the pleadings do not allow the Court to reach the issue at this time.

Out of an abundance of caution we briefly address the subject as follows. According to the case law Seattle Times relies upon "arranger" liability arises out of control over disposal arising from something other than "operation" of a facility. *City of Moses Lake v. U.S.* 458 F. Supp.2d 1198, 1229 (2006). For purposes of this analysis the MTCA and CERCLA standards regarding intent in connection with arranger status are immaterial and we, therefore, do not treat the subject here.

Mr. Steven Ritt cannot be found personally liable as an arranger where he did not

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[5] Defendants reserve all rights to challenge Seattle Times' disclosed expert reports and expert opinions pursuant to the Case Schedule and by remaining silent as to immaterial issues in opposition to this motion waive no rights thereby.

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personally exercise control over disposal of a hazardous substance arising from something other than the operation of the LeatherCare facility. Since Mr. Ritt did not personally control the Troy dumpster or personally arrange for the collection of the waste from the site to be disposed there Mr. Ritt cannot be personally liable as an "arranger." Since Mr. Ritt did not personally control the Troy sewer system or personally arrange for any of the design, construction or maintenance of the Troy sewer system Mr. Ritt cannot be personally liable as an "arranger."

At most, Mr. Ritt oversaw the day to day business operations of LeatherCare. Arranger liability, on Plaintiff's own theory, must arise out of something other than the operations of LeatherCare. Mr. Ritt was only ever involved in the operations of LeatherCare. The record is devoid of any evidence to the contrary.

To the extent that separator water, which had just been through a distillation process but may have contained trace amounts of PCE, was "disposed" of to the sewer, the disposal was in direct connection with or arose out of operation of the LeatherCare facility. To the extent that filters or still bottoms containing PCE were disposed of to the Troy dumpster, the disposal arose directly out of the operation of the LeatherCare facility. Thus, the actions complained of by Seattle Times do not meet the definition of "arranger". Plaintiff's new and unpled "arranger" claim should therefore be dismissed on both procedural and substantive grounds.

VII. CONCLUSION

Based on the foregoing, the Plaintiff's motion for partial summary judgment should be denied. The claims against the Ritts should be dismissed. LeatherCare, Inc. is a going concern. It is not insolvent, or unavailable. It is an active party in this case. All of the acts or omissions complained of in Plaintiff's motion were performed by Mr. Ritt in his capacity as an employee of LeatherCare and within the scope of his duties and employment. Mr. Ritt acted for or on behalf of LeatherCare, Inc. LeatherCare is a "person" but cannot act except

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through individuals. Mr. Ritt managed the day to day business operations of LeatherCare but did not personally control or exercise decision making of a type or kind from which individual "operator" or "arranger" liability may attach. The claims against the Ritts should be dismissed.

DATED this 10th day of July, 2017.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this 10th day of July, 2017, I electronically served the foregoing document on the following:

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DATED this 10th day of July, 2017.

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